



Executive Committee

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LRB096 06325 ASK 25356 a

1 AMENDMENT TO SENATE BILL 1682

2 AMENDMENT NO. _____. Amend Senate Bill 1682 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Funeral or Burial Funds Act is
5 amended by changing Sections 1, 1a, 1a-1, 1b, 2, 3, 4, 4a, 5,
6 and 8.1 and by adding Section 1a-2 as follows:

7 (225 ILCS 45/1) (from Ch. 111 1/2, par. 73.101)

8 Sec. 1. Payment under pre-need contract. Except as
9 otherwise provided in this Section, all sales proceeds paid to
10 any person, partnership, association or corporation with
11 respect to merchandise or services covered by this Act, upon
12 any agreement or contract, or any series or combination of
13 agreements or contracts, which has for a purpose the furnishing
14 or performance of funeral services, or the furnishing or
15 delivery of any personal property, merchandise, or services of
16 any nature in connection with the final disposition of a dead

1 human body, including, but not limited to, outer burial
2 containers, urns, combination casket-vault units, caskets and
3 clothing, for future use at a time determinable by the death of
4 the person or persons whose body or bodies are to be so
5 disposed of, shall be held to be trust funds, and shall be
6 placed in trust in accordance with Sections 1b and 2, or shall
7 be used to purchase life insurance or annuities in accordance
8 with Section 2a. The person, partnership, association or
9 corporation receiving said payments under a pre-need contract
10 is hereby declared to be a trustee thereof until deposits of
11 funds are made in accordance with Section 1b or 2a of this Act.
12 ~~Persons holding less than \$500,000 in trust funds may continue~~
13 ~~to act as the trustee after the funds are deposited in~~
14 ~~accordance with subsection (d) of Section 1b.~~

15 Nothing in this Act shall be construed to prohibit the
16 inclusion of outer burial containers in sales contracts under
17 the Illinois Pre-Need Cemetery Sales Act.

18 (Source: P.A. 91-7, eff. 1-1-2000.)

19 (225 ILCS 45/1a) (from Ch. 111 1/2, par. 73.101a)

20 Sec. 1a. For the purposes of this Act, the following terms
21 shall have the meanings specified, unless the context clearly
22 requires another meaning:

23 "Beneficiary" means the person specified in the pre-need
24 contract upon whose death funeral services or merchandise shall
25 be provided or delivered.

1 "Licensee" means a seller of a pre-need contract who has
2 been licensed by the Comptroller under this Act.

3 "Outer burial container" means any container made of
4 concrete, steel, wood, fiberglass or similar material, used
5 solely at the interment site, and designed and used exclusively
6 to surround or enclose a separate casket and to support the
7 earth above such casket, commonly known as a burial vault,
8 grave box or grave liner, but not including a lawn crypt as
9 defined in the Illinois Pre-need Cemetery Sales Act.

10 "Parent company" means a corporation owning more than 12
11 cemeteries or funeral homes in more than one state.

12 "Person" means any person, partnership, association,
13 corporation, or other entity.

14 "Pre-need contract" means any agreement or contract, or any
15 series or combination of agreements or contracts, whether
16 funded by trust deposits or life insurance policies or
17 annuities, which has for a purpose the furnishing or
18 performance of funeral services or the furnishing or delivery
19 of any personal property, merchandise, or services of any
20 nature in connection with the final disposition of a dead human
21 body. Nothing in this Act is intended to regulate the content
22 of a life insurance policy or a tax-deferred annuity.

23 "Provider" means a person who is obligated for furnishing
24 or performing funeral services or the furnishing or delivery of
25 any personal property, merchandise, or services of any nature
26 in connection with the final disposition of a dead human body.

1 "Purchaser" means the person who originally paid the money
2 under or in connection with a pre-need contract.

3 "Sales proceeds" means the entire amount paid to a seller,
4 exclusive of sales taxes paid by the seller, ~~finance charges~~
5 ~~paid by the purchaser,~~ and credit life, accident or disability
6 insurance premiums, upon any agreement or contract, or series
7 or combination of agreements or contracts, for the purpose of
8 performing funeral services or furnishing personal property,
9 merchandise, or services of any nature in connection with the
10 final disposition of a dead human body, including, but not
11 limited to, the retail price paid for such services and
12 personal property and merchandise.

13 "Purchase price" means sales proceeds ~~less finance charges~~
14 ~~on retail installment contracts.~~

15 "Seller" means the person who sells or offers to sell the
16 pre-need contract to a purchaser, whether funded by a trust
17 agreement, life insurance policy, or tax-deferred annuity.

18 "Trustee" means a person authorized to hold funds under
19 this Act.

20 (Source: P.A. 92-419, eff. 1-1-02.)

21 (225 ILCS 45/1a-1)

22 Sec. 1a-1. Pre-need contracts.

23 (a) It shall be unlawful for any seller doing business
24 within this State to accept sales proceeds from a purchaser,
25 either directly or indirectly by any means, unless the seller

1 enters into a pre-need contract with the purchaser which meets
2 the following requirements:

3 (1) It states the name and address of the principal
4 office of the seller and the parent company of the seller,
5 if any.

6 (1.5) If funded by a trust, it clearly identifies the
7 trustee's name and address and the primary state or federal
8 regulator of the trustee as a corporate fiduciary.

9 (1.7) If funded by life insurance, it clearly
10 identifies the life insurance provider and the primary
11 regulator of the life insurance provider.

12 (2) It clearly identifies the provider's name and
13 address, the purchaser, and the beneficiary, if other than
14 the purchaser.

15 (2.5) If the provider has branch locations, the
16 contract gives the purchaser the opportunity to identify
17 the branch at which the funeral will be provided.

18 (3) It contains a complete description of the funeral
19 merchandise and services to be provided and the price of
20 the merchandise and services, and it clearly discloses
21 whether the price of the merchandise and services is
22 guaranteed or not guaranteed as to price.

23 (A) Each guaranteed price contract shall contain
24 the following statement in 12 point bold type:

25 THIS CONTRACT GUARANTEES THE BENEFICIARY THE
26 SPECIFIC GOODS AND SERVICES CONTRACTED FOR. NO

1 ADDITIONAL CHARGES MAY BE REQUIRED. FOR DESIGNATED
2 GOODS AND SERVICES, ADDITIONAL CHARGES MAY BE INCURRED
3 FOR UNEXPECTED EXPENSES INCLUDING, BUT NOT LIMITED TO,
4 CASH ADVANCES, SHIPPING OF REMAINS FROM A DISTANT
5 PLACE, OR DESIGNATED HONORARIA ORDERED OR DIRECTED BY
6 SURVIVORS.

7 (B) Except as provided in subparagraph (C) of this
8 paragraph (3), each non-guaranteed price contract
9 shall contain the following statement in 12 point bold
10 type:

11 THIS CONTRACT DOES NOT GUARANTEE THE PRICE THE
12 BENEFICIARY WILL PAY FOR ANY SPECIFIC GOODS OR
13 SERVICES. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A
14 DEPOSIT TO BE APPLIED TOWARD THE FINAL PRICE OF THE
15 GOODS OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES
16 MAY BE REQUIRED.

17 (C) If a non-guaranteed price contract may
18 subsequently become guaranteed, the contract shall
19 clearly disclose the nature of the guarantee and the
20 time, occurrence, or event upon which the contract
21 shall become a guaranteed price contract.

22 (4) It provides that if the particular supplies and
23 services specified in the pre-need contract are
24 unavailable at the time of delivery, the provider shall be
25 required to furnish supplies and services similar in style
26 and at least equal in quality of material and workmanship.

1 (5) It discloses any penalties or restrictions,
2 including but not limited to geographic restrictions or the
3 inability of the provider to perform, on the delivery of
4 merchandise, services, or pre-need contract guarantees.

5 (6) Regardless of the method of funding the pre-need
6 contract, the following must be disclosed:

7 (A) Whether the pre-need contract is to be funded
8 by a trust, life insurance, or an annuity;

9 (B) The nature of the relationship among the person
10 funding the pre-need contract, the provider, and the
11 seller; and

12 (C) The impact on the pre-need contract of (i) any
13 changes in the funding arrangement including but not
14 limited to changes in the assignment, beneficiary
15 designation, or use of the funds; (ii) any specific
16 penalties to be incurred by the contract purchaser as a
17 result of failure to make payments; (iii) penalties to
18 be incurred or moneys or refunds to be received as a
19 result of cancellations; and (iv) all relevant
20 information concerning what occurs and whether any
21 entitlements or obligations arise if there is a
22 difference between the proceeds of the particular
23 funding arrangement and the amount actually needed to
24 pay for the funeral at-need.

25 (D) The method of changing the provider.

26 (b) All pre-need contracts are subject to the Federal Trade

1 Commission Rule concerning the Cooling-Off Period for
2 Door-to-Door Sales (16 CFR Part 429).

3 (c) No pre-need contract shall be sold in this State unless
4 there is a provider for the services and personal property
5 being sold. If the seller is not a provider, then the seller
6 must have a binding agreement with a provider, and the identity
7 of the provider and the nature of the agreement between the
8 seller and the provider shall be disclosed in the pre-need
9 contract at the time of the sale and before the receipt of any
10 sales proceeds. The failure to disclose the identity of the
11 provider, the nature of the agreement between the seller and
12 the provider, or any changes thereto to the purchaser and
13 beneficiary, or the failure to make the disclosures required in
14 subdivision (a)(1), constitutes an intentional violation of
15 this Act.

16 (d) All pre-need contracts must be in writing in at least
17 11 point type, numbered, and executed in duplicate. A signed
18 copy of the pre-need contract must be provided to the purchaser
19 at the time of entry into the pre-need contract. The
20 Comptroller may by rule develop a model pre-need contract form
21 that ~~which~~ meets the requirements of this Act.

22 (e) The State Comptroller shall by rule develop a booklet
23 for consumers in plain English describing the scope,
24 application, and consumer protections of this Act. After the
25 adoption of these rules, no pre-need contract shall be sold in
26 this State unless (i) the seller distributes to the purchaser

1 prior to the sale a booklet promulgated or approved for use by
2 the State Comptroller; (ii) the seller explains to the
3 purchaser the terms of the pre-need contract prior to the
4 purchaser signing; and (iii) the purchaser initials a statement
5 in the contract confirming that the seller has explained the
6 terms of the contract prior to the purchaser signing.

7 (f) All sales proceeds received in connection with a
8 pre-need contract shall be deposited into a trust account as
9 provided in Section 1b and Section 2 of this Act, or shall be
10 used to purchase a life insurance policy or tax-deferred
11 annuity as provided in Section 2a of this Act.

12 (g) No pre-need contract shall be sold in this State unless
13 it is accompanied by a funding mechanism permitted under this
14 Act, and unless the seller is licensed by the Comptroller as
15 provided in Section 3 of this Act. Nothing in this Act is
16 intended to relieve sellers of pre-need contracts from being
17 licensed under any other Act required for their profession or
18 business, and being subject to the rules promulgated to
19 regulate their profession or business, including rules on
20 solicitation and advertisement.

21 (Source: P.A. 92-419, eff. 1-1-02.)

22 (225 ILCS 45/1a-2 new)

23 Sec. 1a-2. Pre-Need Funeral Consumer Protection Fund.

24 (a) Each licensee shall pay a fee of \$5 out of the funds
25 received for each pre-need contract sold and shall forward this

1 sum to the Comptroller within 10 days after (i) the funds
2 required to be placed in trust pursuant to Section 1b of this
3 Act are deposited into the trust account or (ii) the funds are
4 used to purchase a pre-need insurance policy. Fees collected
5 under this Section shall be deposited into the Pre-need Funeral
6 Consumer Protection Fund, which is hereby created as a special
7 fund in the State treasury. Moneys in the Fund may be expended
8 for the purposes specified in subsection (b) and to purchase
9 insurance to cover losses guaranteed by the Fund.

10 (b) In the event that the purchaser is unable to receive
11 the benefits of his or her pre-need contract or to receive the
12 funds due by reason of cancellation of the contract, the
13 purchaser may apply to the Comptroller on a form prescribed by
14 the Comptroller for restitution from the Pre-need Funeral
15 Consumer Protection Fund. Upon a finding by the Comptroller
16 that the benefits or return of payment is not available to the
17 purchaser, the Comptroller may cause restitution to be paid to
18 the purchaser from the Pre-need Funeral Consumer Protection
19 Fund.

20 (c) In all such cases where a purchaser is paid restitution
21 from the Fund, the Comptroller shall be subrogated to that
22 purchaser's claims against the licensee for all amounts paid
23 from the Fund. If the licensee's liability for default is
24 subsequently proven, any award made by a court of law shall be
25 made payable to the Pre-need Funeral Consumer Protection Fund
26 up to the amount paid to the purchaser from the Fund and the

1 Comptroller shall request that the Attorney General engage in
2 all reasonable post-judgment collection steps to collect such
3 claims from the judgment debtor and reimburse the Fund.

4 (d) The Fund shall not be applied toward any restitution
5 for losses in any lawsuit initiated by the Attorney General or
6 Comptroller or with respect to any claim made on a pre-need
7 contract that occurred prior to the effective date of this
8 amendatory Act of the 96th General Assembly.

9 (e) Notwithstanding any other provision of this Section,
10 the payment of restitution from the Fund shall be a matter of
11 grace and not of right and no purchaser shall have any vested
12 right in the Fund as a beneficiary or otherwise.

13 (f) The Fund may not be allocated for any purpose other
14 than that specified in this Act.

15 (225 ILCS 45/1b) (from Ch. 111 1/2, par. 73.101b)

16 Sec. 1b. (a) Whenever a seller receives sales proceeds
17 under a pre-need contract that the purchaser elects to fund by
18 a trust agreement, the seller may retain an initial amount
19 equal to 5% of the purchase price of the services, personal
20 property or merchandise, or 15% of the purchase price of outer
21 burial containers. Thereafter, a seller shall deposit into
22 trust the amounts specified in this Section so that no later
23 than upon the final payment on the contract, the trust shall
24 equal or exceed 95% of the purchase price of all services,
25 personal property, or merchandise, except for outer burial

1 containers, and 85% of the purchase price of outer burial
2 containers.

3 (b) In the event that sales proceeds to be deposited into a
4 trust are received pursuant to a cash sale or an ~~a retail~~
5 installment contract, the seller may retain the initial
6 percentage authorized by subsection (a) of this Section ~~and any~~
7 ~~finance charge paid by the purchaser~~, and thereafter shall
8 deposit into the trust the entire balance of sales proceeds
9 received.

10 (c) In the event that the deposits into a trust required by
11 this Section do not, after final payment by the consumer,
12 result in the trust containing at least 95% of the purchase
13 ~~sales~~ price of all services, personal property or merchandise,
14 except for outer burial containers and 85% of the purchase
15 price of outer burial containers, the seller shall make an
16 additional deposit into the trust in an amount sufficient to
17 meet these percentages.

18 (d) The trustee may not be the seller or provider of
19 funeral services or merchandise ~~unless the seller holds sales~~
20 ~~of less than \$500,000 in trust, and deposits funds for which~~
21 ~~the seller is acting as trustee in (1) withdrawable accounts of~~
22 ~~State chartered or federally chartered savings and loan~~
23 ~~associations insured by the Federal Deposit Insurance~~
24 ~~Corporation; (2) deposits or certificates of deposits in State~~
25 ~~or federal banks insured by the Federal Deposit Insurance~~
26 ~~Corporation; or (3) share accounts or share certificate~~

~~accounts in a State or federal credit union, the accounts of which are insured as required by the Illinois Credit Union Act or the Federal Credit Union Act, as applicable.~~

(Source: P.A. 88-477.)

(225 ILCS 45/2) (from Ch. 111 1/2, par. 73.102)

Sec. 2. (a) If a purchaser selects a trust arrangement to fund the pre-need contract, all trust deposits as determined by Section 1b shall be made within 30 days of receipt.

(b) A trust established under this Act must be maintained with a corporate fiduciary as defined in Section 1-5.05 of the Corporate Fiduciary Act.÷

~~(1) in a trust account established in a bank, savings and loan association, savings bank, or credit union authorized to do business in Illinois in which accounts are insured by an agency of the federal government; or~~

~~(2) in a trust company authorized to do business in Illinois.~~

(c) Trust agreements and amendments to the trust agreements used to fund a pre-need contract shall be filed with the Comptroller.

(d) (Blank).

(e) A seller or provider shall furnish to the trustee and depository the name of each payor and the amount of payment on each such account for which deposit is being so made. Nothing shall prevent the trustee ~~or a seller or provider acting as a~~

1 ~~trustee in accordance with this Act~~ from commingling the
2 deposits in any such trust fund for purposes of its management
3 and the investment of its funds as provided in the Common Trust
4 Fund Act. In addition, multiple trust funds maintained under
5 this Act may be commingled or commingled with other funeral or
6 burial related trust funds if all record keeping requirements
7 imposed by law are met.

8 (f) (Blank). ~~Trust funds may be maintained in a financial~~
9 ~~institution described in subsection (b) which is located in a~~
10 ~~state adjoining this State where: (1) the financial institution~~
11 ~~is located within 50 miles of the border of this State, (2) its~~
12 ~~accounts are federally insured, and (3) it has registered with~~
13 ~~the Illinois Secretary of State for purposes of service of~~
14 ~~process.~~

15 (g) Upon no less than 30 days prior notice to the
16 Comptroller, the seller may change the trustee of the fund.
17 Failure to provide the Comptroller with timely prior notice is
18 an intentional violation of this Act.

19 (h) A trustee shall at least annually furnish to each
20 purchaser a statement containing: (1) the receipts,
21 disbursements, and inventory of the trust, including an
22 explanation of any fees or expenses charged by the trustee
23 under Section 4 of this Act or otherwise, (2) an explanation of
24 the purchaser's right to a refund, if any, under this Act, and
25 (3) identifying the primary regulator of the trust as a
26 corporate fiduciary under state or federal law.

1 (Source: P.A. 92-419, eff. 1-1-02.)

2 (225 ILCS 45/3) (from Ch. 111 1/2, par. 73.103)

3 Sec. 3. Licensing.

4 (a) No person, firm, partnership, association or
5 corporation may act as seller without first securing from the
6 State Comptroller a license to so act. Application for such
7 license shall be in writing, signed by the applicant and duly
8 verified on forms furnished by the Comptroller. Each
9 application shall contain at least the following:

10 (1) The full name and address (both residence and place
11 of business) of the applicant, and every member, officer
12 and director thereof if the applicant is a firm,
13 partnership, association, or corporation, and of every
14 shareholder holding more than 10% of the corporate stock if
15 the applicant is a corporation;

16 (2) A statement of the applicant's assets and
17 liabilities;

18 (3) The name and address of the applicant's principal
19 place of business at which the books, accounts, and records
20 shall be available for examination by the Comptroller as
21 required by this Act;

22 (4) The names and addresses of the applicant's branch
23 locations at which pre-need sales shall be conducted and
24 which shall operate under the same license number as the
25 applicant's principal place of business;

1 (5) For each individual listed under item (1) above, a
2 detailed statement of the individual's business experience
3 for the 10 years immediately preceding the application; any
4 present or prior connection between the individual and any
5 other person engaged in pre-need sales; any felony or
6 misdemeanor convictions for which fraud was an essential
7 element; any charges or complaints lodged against the
8 individual for which fraud was an essential element and
9 which resulted in civil or criminal litigation; any failure
10 of the individual to satisfy an enforceable judgment
11 entered against him based upon fraud; and any other
12 information requested by the Comptroller relating to past
13 business practices of the individual. Since the
14 information required by this item (5) may be confidential
15 or contain proprietary information, this information shall
16 not be available to other licensees or the general public
17 and shall be used only for the lawful purposes of the
18 Comptroller in enforcing this Act;

19 (6) The name of the trustee and, if applicable, the
20 names of the advisors to the trustee, including a copy of
21 the proposed trust agreement under which the trust funds
22 are to be held as required by this Act; and

23 (7) Such other information as the Comptroller may
24 reasonably require in order to determine the qualification
25 of the applicant to be licensed under this Act.

26 (b) Applications for license shall be accompanied by a

1 fidelity bond executed by the applicant and a surety company
2 authorized to do business in this State or an irrevocable,
3 unconditional letter of credit issued by a bank, credit union,
4 or trust company authorized to do business in the State of
5 Illinois, as approved by the State Comptroller, in such amount
6 not exceeding \$10,000 as the Comptroller may require. If, after
7 notice and an opportunity to be heard, it has been determined
8 that a licensee has violated this Act within the past 5
9 calendar years, ~~or if a licensee does not retain a corporate~~
10 ~~fiduciary, as defined in the Corporate Fiduciary Act, to manage~~
11 ~~the funds in trust pursuant to this Act,~~ the Comptroller may
12 require an additional bond or letter of credit from the
13 licensee from time to time in amounts equal to one-tenth of
14 such trust funds, which bond or letter of credit shall run to
15 the Comptroller for the use and benefit of the beneficiaries of
16 such trust funds.

17 The licensee shall keep accurate accounts, books and
18 records in this State, at the principal place of business
19 identified in the licensee's license application or as
20 otherwise approved by the Comptroller in writing, of all
21 transactions, copies of all pre-need contracts, trust
22 agreements, and other agreements, dates and amounts of payments
23 made and accepted thereon, the names and addresses of the
24 contracting parties, the persons for whose benefit such funds
25 are accepted, and the names of the depositaries of such funds.
26 Each licensee shall maintain the documentation for a period of

1 3 years after the licensee has fulfilled his obligations under
2 the pre-need contract. Additionally, for a period not to exceed
3 6 months after the performance of all terms in a pre-need sales
4 contract, the licensee shall maintain copies of the contract at
5 the licensee branch location where the contract was entered or
6 at some other location agreed to by the Comptroller in writing.
7 If an insurance policy or tax-deferred annuity is used to fund
8 the pre-need contract, the licensee under this Act shall keep
9 and maintain accurate accounts, books, and records in this
10 State, at the principal place of business identified in the
11 licensee's application or as otherwise approved by the
12 Comptroller in writing, of all insurance policies and
13 tax-deferred annuities used to fund the pre-need contract, the
14 name and address of insured, annuitant, and initial
15 beneficiary, and the name and address of the insurance company
16 issuing the policy or annuity. If a life insurance policy or
17 tax-deferred annuity is used to fund a pre-need contract, the
18 licensee shall notify the insurance company of the name of each
19 pre-need contract purchaser and the amount of each payment when
20 the pre-need contract, insurance policy or annuity is
21 purchased.

22 The licensee shall make reports to the Comptroller annually
23 or at such other time as the Comptroller may require, on forms
24 furnished by the Comptroller. The licensee shall file the
25 annual report with the Comptroller within 75 days after the end
26 of the licensee's fiscal year. The Comptroller shall for good

1 cause shown grant an extension for the filing of the annual
2 report upon the written request of the licensee. Such extension
3 shall not exceed 60 days. If a licensee fails to submit an
4 annual report to the Comptroller within the time specified in
5 this Section, the Comptroller shall impose upon the licensee a
6 penalty of \$5 for each and every day the licensee remains
7 delinquent in submitting the annual report. The Comptroller may
8 abate all or part of the \$5 daily penalty for good cause shown.
9 Every application shall be accompanied by a check or money
10 order in the amount of \$25 and every report shall be
11 accompanied by a check or money order in the amount of \$10
12 payable to: Comptroller, State of Illinois.

13 The licensee shall make all required books and records
14 pertaining to trust funds, insurance policies, or tax-deferred
15 annuities available to the Comptroller for examination. The
16 Comptroller, or a person designated by the Comptroller who is
17 trained to perform such examinations, may at any time
18 investigate the books, records and accounts of the licensee
19 with respect to trust funds, insurance policies, or
20 tax-deferred annuities and for that purpose may require the
21 attendance of and examine under oath all persons whose
22 testimony he may require. The licensee shall pay a fee for such
23 examination in accordance with a schedule established by the
24 Comptroller. The fee shall not exceed the cost of such
25 examination. For pre-need contracts funded by trust
26 arrangements, the cost of an initial examination shall be borne

1 by the licensee if it has \$10,000 or more in trust funds,
2 otherwise, by the Comptroller. The charge made by the
3 Comptroller for an examination shall be based upon the total
4 amount of trust funds held by the licensee at the end of the
5 calendar or fiscal year for which the report is required by
6 this Act and shall be in accordance with the following
7 schedule:

8 Less than \$10,000..... no charge;
9 \$10,000 or more but less than \$50,000..... \$10;
10 \$50,000 or more but less than \$100,000 \$40;
11 \$100,000 or more but less than \$250,000..... \$80;
12 \$250,000 or more \$100.

13 The Comptroller may order additional audits or
14 examinations as he or she may deem necessary or advisable to
15 ensure the safety and stability of the trust funds and to
16 ensure compliance with this Act. These additional audits or
17 examinations shall only be made after good cause is established
18 by the Comptroller in the written order. The grounds for
19 ordering these additional audits or examinations may include,
20 but shall not be limited to:

21 (1) material and unverified changes or fluctuations in
22 trust balances or insurance or annuity policy amounts;

23 (2) the licensee changing trustees more than twice in
24 any 12-month period;

25 (3) any withdrawals or attempted withdrawals from the
26 trusts, insurance policies, or annuity contracts in

1 violation of this Act; or

2 (4) failure to maintain or produce documentation
3 required by this Act for deposits into trust accounts,
4 trust investment activities, or life insurance or annuity
5 policies.

6 ~~The~~ Prior to ordering an additional audit or examination,
7 ~~the Comptroller shall request the licensee to respond and~~
8 ~~comment upon the factors identified by the Comptroller as~~
9 ~~warranting the subsequent examination or audit. The licensee~~
10 ~~shall have 30 days to provide a response to the Comptroller. If~~
11 ~~the Comptroller decides to proceed with the additional~~
12 ~~examination or audit, the licensee shall bear the full cost of~~
13 that examination or audit, up to a maximum of \$20,000 ~~\$7,500~~.
14 The Comptroller may elect to pay for the examination or audit
15 and receive reimbursement from the licensee. Payment of the
16 costs of the examination or audit by a licensee shall be a
17 condition of receiving, maintaining, or renewing a license
18 under this Act. All moneys received by the Comptroller for
19 examination or audit fees shall be maintained in a separate
20 account to be known as the Comptroller's Administrative Fund.
21 This Fund, subject to appropriation by the General Assembly,
22 may be utilized by the Comptroller for enforcing this Act and
23 other purposes that may be authorized by law.

24 For pre-need contracts funded by life insurance or a
25 tax-deferred annuity, the cost of an examination shall be borne
26 by the licensee ~~if it has received \$10,000 or more in premiums~~

1 ~~during the preceding calendar year.~~ The fee schedule for such
2 examination shall be established in rules promulgated by the
3 Comptroller. In the event such investigation or other
4 information received by the Comptroller discloses a
5 substantial violation of the requirements of this Act, the
6 Comptroller shall revoke the license of such person upon a
7 hearing as provided in this Act. Such licensee may terminate
8 all further responsibility for compliance with the
9 requirements of this Act by voluntarily surrendering the
10 license to the Comptroller, or in the event of its loss,
11 furnishing the Comptroller with a sworn statement to that
12 effect, which states the licensee's intention to discontinue
13 acceptance of funds received under pre-need contracts. Such
14 license or statement must be accompanied by an affidavit that
15 said licensee has lawfully expended or refunded all funds
16 received under pre-need contracts, and that the licensee will
17 accept no additional sales proceeds. The Comptroller shall
18 immediately cancel or revoke said license.

19 (Source: P.A. 92-419, eff. 1-1-02.)

20 (225 ILCS 45/4) (from Ch. 111 1/2, par. 73.104)

21 Sec. 4. Withdrawal of funds; revocability of contract.

22 (a) Except as otherwise provided in this Act, monies in a
23 trust established under Section 2 ~~The amount or amounts so~~
24 ~~deposited into trust, with interest thereon, if any,~~ shall not
25 be withdrawn until after the death of the beneficiary ~~person or~~

1 ~~persons for whose funeral or burial such funds were paid,~~
2 unless sooner withdrawn and refunded to the purchaser as
3 provided in this Section ~~repaid to the person who originally~~
4 ~~paid the money under or in connection with the pre-need~~
5 ~~contract or to his or her legal representative.~~ The life
6 insurance policies or tax-deferred annuities shall not be
7 surrendered until the death of the beneficiary ~~person or~~
8 ~~persons for whose funeral or burial the policies or annuities~~
9 ~~were purchased,~~ unless sooner surrendered and repaid to the
10 owner of the policy purchased under or in connection with the
11 pre-need contract or to his or her legal representative. If,
12 however, the agreement or series of agreements provides for
13 forfeiture and retention of any or all payments as and for
14 liquidated damages as provided in Section 6, then the trustee
15 may withdraw the deposits. In addition, nothing in this Section
16 (i) prohibits the change of depositary by the trustee and the
17 transfer of trust funds from one depositary to another or (ii)
18 prohibits a contract purchaser who is or may become eligible
19 for public assistance under any applicable federal or State law
20 or local ordinance including, but not limited to, eligibility
21 under 24 C.F.R., Part 913 relating to family insurance under
22 federal Housing and Urban Development Policy from irrevocably
23 waiving, in writing, and renouncing the right to cancel a
24 pre-need contract for funeral services in an amount prescribed
25 by rule of the Department of Healthcare and Family Services. No
26 guaranteed price pre-need funeral contract may prohibit a

1 purchaser from making a contract irrevocable to the extent that
2 federal law or regulations require that such a contract be
3 irrevocable for purposes of the purchaser's eligibility for
4 Supplemental Security Income benefits, Medicaid, or another
5 public assistance program, as permitted under federal law.

6 (b) If for any reason a seller or provider who has engaged
7 in pre-need sales has refused, cannot, or does not comply with
8 the terms of the pre-need contract within a reasonable time
9 after he or she is required to do so, the purchaser or his or
10 her heirs or assigns or duly authorized representative shall
11 have the right to a refund of an amount equal to the sales
12 price paid for undelivered merchandise or services plus any
13 ~~otherwise earned undistributed interest~~ amounts held in trust
14 attributable to the contract, within 30 days of the filing of a
15 sworn affidavit with the trustee setting forth the existence of
16 the contract and the fact of breach. A copy of this affidavit
17 shall be filed with the Comptroller and the seller. In the
18 event a seller is prevented from performing by strike, shortage
19 of materials, civil disorder, natural disaster, or any like
20 occurrence beyond the control of the seller or provider, the
21 seller or provider's time for performance shall be extended by
22 the length of the delay. Nothing in this Section shall relieve
23 the seller or provider from any liability for non-performance
24 of his or her obligations under the pre-need contract.

25 (c) After final payment on a pre-need contract, any
26 purchaser may, prior to the death of the beneficiary and upon

1 written demand to a seller, demand that the pre-need contract
2 with the seller be terminated. The seller shall, within 30
3 days, initiate a refund to the purchaser of the entire amount
4 held in trust attributable to undelivered merchandise and
5 unperformed services plus any amounts held in trust
6 attributable to the contract, ~~including otherwise earned~~
7 ~~undistributed interest earned thereon~~ or the cash surrender
8 value of a life insurance policy or tax-deferred annuity.

9 (c-5) If, after the death of the beneficiary, no funeral
10 merchandise or services are provided or if the funeral is
11 conducted by another provider ~~person~~, the seller may keep no
12 more than 10% of the payments made under the pre-need contract
13 or \$300, whichever sum is less. The remainder of the trust
14 funds or insurance or annuity proceeds shall be forwarded to
15 the legal heirs of the deceased beneficiary or as determined by
16 probate action.

17 (d) The placement and retention of all or a portion of a
18 casket, combination casket-vault, urn, or outer burial
19 container comprised of materials which are designed to
20 withstand prolonged storage in the manner set forth in this
21 paragraph without adversely affecting the structural integrity
22 or aesthetic characteristics of such merchandise in a specific
23 burial space in which the person or persons for whose funeral
24 or burial the merchandise was intended has a right of
25 interment, or the placement of the merchandise in a specific
26 mausoleum crypt or lawn crypt in which such person has a right

1 of entombment, or the placement of the merchandise in a
2 specific niche in which such person has a right of inurnment,
3 or delivery to such person and retention by such person until
4 the time of need shall constitute actual delivery to the person
5 who originally paid the money under or in connection with said
6 agreement or series of agreements. Actual delivery shall
7 eliminate, from and after the date of actual delivery, any
8 requirement under this Act to place or retain in trust any
9 funds received for the sale of such merchandise. The delivery,
10 prior to the time of need, of any funeral or burial merchandise
11 in any manner other than authorized by this Section shall not
12 constitute actual delivery and shall not eliminate any
13 requirement under this Act to place or retain in trust any
14 funds received for the sale of such merchandise.

15 (Source: P.A. 95-331, eff. 8-21-07.)

16 (225 ILCS 45/4a)

17 Sec. 4a. Investment of funds.

18 (a) A trustee has a duty to invest and manage the trust
19 assets pursuant to the Prudent Investor Rule under the Trusts
20 and Trustees Act ~~shall, with respect to the investment of trust~~
21 ~~funds, exercise the judgment and care under the circumstances~~
22 ~~then prevailing that persons of prudence, discretion, and~~
23 ~~intelligence exercise in the management of their own affairs,~~
24 ~~not in regard to speculation, but in regard to the permanent~~
25 ~~disposition of their funds, considering the probable income as~~

1 ~~well as the probable safety of their capital.~~

2 (b) The trust shall be a single-purpose trust fund. In the
3 event of the seller's bankruptcy, insolvency or assignment for
4 the benefit of creditors, or an adverse judgment, the trust
5 funds shall not be available to any creditor as assets of the
6 seller or to pay any expenses of any bankruptcy or similar
7 proceeding, but shall be distributed to the purchasers or
8 managed for their benefit by the trustee holding the funds.
9 Except in an action by the Comptroller to revoke a license
10 issued pursuant to this Act and for creation of a receivership
11 as provided in this Act, the trust shall not be subject to
12 judgment, execution, garnishment, attachment, or other seizure
13 by process in bankruptcy or otherwise, nor to sale, pledge,
14 mortgage, or other alienation, and shall not be assignable
15 except as approved by the Comptroller. The changes made by
16 Public ~~this amendatory Act 91-7 of the 91st General Assembly~~
17 are intended to clarify existing law regarding the inability of
18 licensees to pledge the trust.

19 (c) Because it is not known at the time of deposit or at
20 the time that income is earned on the trust account to whom the
21 principal and the accumulated earnings will be distributed for
22 the purpose of determining the Illinois income tax due on these
23 trust funds, the principal and any accrued earnings or losses
24 related to each individual account shall be held in suspense
25 until the final determination is made as to whom the account
26 shall be paid. The beneficiary's estate shall not be

1 responsible for any funeral and burial purchases listed in a
2 pre-need contract if the pre-need contract is entered into on a
3 guaranteed price basis.

4 If a pre-need contract is not a guaranteed price contract,
5 then to the extent the proceeds of a non-guaranteed price
6 pre-need contract cover the funeral and burial expenses for the
7 beneficiary, no claim may be made against the estate of the
8 beneficiary. A claim may be made against the beneficiary's
9 estate if the charges for the funeral services and merchandise
10 at the time of use exceed the amount of the amount in trust
11 plus the percentage of the sale proceeds initially retained by
12 the seller or the face value of the life insurance policy or
13 tax-deferred annuity.

14 ~~(d) Trust funds shall not be invested by the trustee in~~
15 ~~life insurance policies or tax deferred annuities unless the~~
16 ~~following requirements are met:~~

17 ~~(1) The company issuing the life insurance policies or~~
18 ~~tax deferred annuities is licensed by the Illinois~~
19 ~~Department of Insurance and the insurance producer or~~
20 ~~annuity seller is licensed to do business in the State of~~
21 ~~Illinois;~~

22 ~~(2) Prior to the investment, the purchaser approves, in~~
23 ~~writing, the investment in life insurance policies or~~
24 ~~tax deferred annuities;~~

25 ~~(3) Prior to the investment, the purchaser is notified~~
26 ~~by the seller in writing about the disclosures required for~~

1 ~~all pre-need contracts under Section 1a-1 of this Act, and~~
2 ~~the purchase of life insurance or a tax-deferred annuity is~~
3 ~~subject to the requirements of Section 2a of this Act;~~

4 ~~(4) Prior to the investment, the trustee informs the~~
5 ~~Comptroller that trust funds shall be removed from the~~
6 ~~trust account to purchase life insurance or a tax-deferred~~
7 ~~annuity upon the written consent of the purchaser;~~

8 ~~(5) The purchaser retains the right to refund provided~~
9 ~~for in this Act, unless the pre-need contract is sold on an~~
10 ~~irrevocable basis as provided in Section 4 of this Act; and~~

11 ~~(6) Notice must be given in writing that the cash~~
12 ~~surrender value of a life insurance policy may be less than~~
13 ~~the amount provided for by the refund provisions of the~~
14 ~~trust account.~~

15 (Source: P.A. 91-7, eff. 6-1-99.)

16 (225 ILCS 45/5) (from Ch. 111 1/2, par. 73.105)

17 Sec. 5. This Act shall not be construed to prohibit the
18 trustee and trustee's depository from being reimbursed and
19 receiving from such funds their reasonable compensation and
20 expenses in the custody and administration of such funds
21 pursuant to the Trusts and Trustees Act ~~provided that the~~
22 ~~combined expenses and compensation shall not exceed 25% of the~~
23 ~~earnings of the fund so deposited under each of the agreements~~
24 ~~or series of agreements calculated on an annual basis and paid~~
25 ~~at any time during that year.~~

1 (Source: P.A. 86-509.)

2 (225 ILCS 45/8.1)

3 Sec. 8.1. Sales; liability of purchaser for shortage. In
4 the event of a sale or transfer of all or substantially all of
5 the assets of the licensee, the sale or transfer of the
6 controlling interest of the corporate stock of the licensee if
7 the licensee is a corporation, the sale or transfer of the
8 controlling interest of the partnership if the licensee is a
9 partnership, or the sale of the licensee pursuant to
10 foreclosure proceedings, the purchaser is liable for any
11 shortages existing before or after the sale in the trust funds
12 required to be maintained in a trust pursuant to this Act and
13 shall honor all pre-need contracts and trusts entered into by
14 the licensee. Any shortages existing in the trust funds
15 constitute a prior lien in favor of the trust for the total
16 value of the shortages, and notice of that lien shall be
17 provided in all sales instruments.

18 In the event of a sale or transfer of all or substantially
19 all of the assets of the licensee, the sale or transfer of the
20 controlling interest of the corporate stock of the licensee if
21 the licensee is a corporation, or the sale or transfer of the
22 controlling interest of the partnership if the licensee is a
23 partnership, the licensee shall, at least 21 days prior to the
24 sale or transfer, notify the Comptroller, in writing, of the
25 pending date of sale or transfer so as to permit the

1 Comptroller to audit the books and records of the licensee. The
2 audit must be commenced within 10 business days of the receipt
3 of the notification and completed within the 21-day
4 notification period unless the Comptroller notifies the
5 licensee during that period that there is a basis for
6 determining a deficiency which will require additional time to
7 finalize. Failure to provide timely notice to the Comptroller
8 under this Section shall be an intentional violation of this
9 Act. The sale or transfer may not be completed by the licensee
10 unless and until:

11 (i) the Comptroller has completed the audit of the
12 licensee's books and records;

13 (ii) any delinquency existing in the trust funds has
14 been paid by the licensee, or arrangements satisfactory to
15 the Comptroller have been made by the licensee on the sale
16 or transfer for the payment of any delinquency; and

17 (iii) the Comptroller issues a license upon
18 application of the new owner, which license must be applied
19 for within 21 ~~30~~ days of the anticipated date of the sale
20 or transfer, subject to the payment of any delinquencies,
21 if any, as stated in item (ii).

22 For purposes of this Section, a person, firm, corporation,
23 partnership, or institution that acquires the licensee through
24 a real estate foreclosure shall be subject to the provisions of
25 this Section.

26 (Source: P.A. 92-419, eff. 1-1-02.)

1 Section 10. The Illinois Pre-Need Cemetery Sales Act is
2 amended by changing Sections 4, 14, 15, and 16 as follows:

3 (815 ILCS 390/4) (from Ch. 21, par. 204)

4 Sec. 4. Definitions. As used in this Act, the following
5 terms shall have the meaning specified:

6 (A) "Pre-need sales contract" or "Pre-need sales" means any
7 agreement or contract or series or combination of agreements or
8 contracts which have for a purpose the sale of cemetery
9 merchandise, cemetery services or undeveloped interment,
10 entombment or inurnment spaces where the terms of such sale
11 require payment or payments to be made at a currently
12 determinable time and where the merchandise, services or
13 completed spaces are to be provided more than 120 days
14 following the initial payment on the account. An agreement or
15 contract for a memorial, marker, or monument shall not be
16 deemed a "pre-need sales contract" or a "pre-need sale" if the
17 memorial, marker, or monument is delivered within 180 days
18 following initial payment on the account and work thereon
19 commences a reasonably short time after initial payment on the
20 account.

21 (B) "Delivery" occurs when:

22 (1) Physical possession of the merchandise is
23 transferred or the easement for burial rights in a
24 completed space is executed, delivered and transferred to

1 the buyer; or

2 (2) Following authorization by a purchaser under a
3 pre-need sales contract, title to the merchandise has been
4 transferred to the buyer and the merchandise has been paid
5 for and is in the possession of the seller who has placed
6 it, until needed, at the site of its ultimate use; or

7 (3) Following authorization by a purchaser under a
8 pre-need sales contract, the merchandise has been
9 permanently identified with the name of the buyer or the
10 beneficiary and delivered to a licensed and bonded
11 warehouse and both title to the merchandise and a warehouse
12 receipt have been delivered to the purchaser or beneficiary
13 and a copy of the warehouse receipt has been delivered to
14 the licensee for retention in its files; except that in the
15 case of outer burial containers, the use of a licensed and
16 bonded warehouse as set forth in this paragraph shall not
17 constitute delivery for purposes of this Act. Nothing
18 herein shall prevent a seller from perfecting a security
19 interest in accordance with the Uniform Commercial Code on
20 any merchandise covered under this Act.

21 All warehouse facilities to which sellers deliver
22 merchandise pursuant to this Act shall:

23 (i) be either located in the State of Illinois or
24 qualify as a foreign warehouse facility as defined
25 herein;

26 (ii) submit to the Comptroller not less than

1 annually, by March 1 of each year, a report of all
2 cemetery merchandise stored by each licensee under
3 this Act which is in storage on the date of the report;

4 (iii) permit the Comptroller or his designee at any
5 time to examine stored merchandise and to examine any
6 documents pertaining thereto;

7 (iv) submit evidence satisfactory to the
8 Comptroller that all merchandise stored by said
9 warehouse for licensees under this Act is insured for
10 casualty or other loss normally assumed by a bailee for
11 hire;

12 (v) demonstrate to the Comptroller that the
13 warehouse has procured and is maintaining a
14 performance bond in the form, content and amount
15 sufficient to unconditionally guarantee to the
16 purchaser or beneficiary the prompt shipment of the
17 cemetery merchandise.

18 (C) "Cemetery merchandise" means items of personal
19 property normally sold by a cemetery authority not covered
20 under the Illinois Funeral or Burial Funds Act, including but
21 not limited to:

- 22 (1) memorials,
23 (2) markers,
24 (3) monuments,
25 (4) foundations, and
26 (5) outer burial containers.

1 (D) "Undeveloped interment, entombment or inurnment
2 spaces" or "undeveloped spaces" means any space to be used for
3 the reception of human remains that is not completely and
4 totally constructed at the time of initial payment therefor in
5 a:

- 6 (1) lawn crypt,
- 7 (2) mausoleum,
- 8 (3) garden crypt,
- 9 (4) columbarium, or
- 10 (5) cemetery section.

11 (E) "Cemetery services" means those services customarily
12 performed by cemetery or crematory personnel in connection with
13 the interment, entombment, inurnment or cremation of a dead
14 human body.

15 (F) "Cemetery section" means a grouping of spaces intended
16 to be developed simultaneously for the purpose of interring
17 human remains.

18 (G) "Columbarium" means an arrangement of niches that may
19 be an entire building, a complete room, a series of special
20 indoor alcoves, a bank along a corridor or part of an outdoor
21 garden setting that is constructed of permanent material such
22 as bronze, marble, brick, stone or concrete for the inurnment
23 of human remains.

24 (H) "Lawn crypt" means a permanent underground crypt
25 usually constructed of reinforced concrete or similar material
26 installed in multiple units for the entombment of human

1 remains.

2 (I) "Mausoleum" or "garden crypt" means a grouping of
3 spaces constructed of reinforced concrete or similar material
4 constructed or assembled above the ground for entombing human
5 remains.

6 (J) "Memorials, markers and monuments" means the object
7 usually comprised of a permanent material such as granite or
8 bronze used to identify and memorialize the deceased.

9 (K) "Foundations" means those items used to affix or
10 support a memorial or monument to the ground in connection with
11 the installation of a memorial, marker or monument.

12 (L) "Person" means an individual, corporation,
13 partnership, joint venture, business trust, voluntary
14 organization or any other form of entity.

15 (M) "Seller" means any person selling or offering for sale
16 cemetery merchandise, cemetery services or undeveloped
17 interment, entombment, or inurnment spaces in accordance with a
18 pre-need sales contract.

19 (N) "Religious cemetery" means a cemetery owned, operated,
20 controlled or managed by any recognized church, religious
21 society, association or denomination or by any cemetery
22 authority or any corporation administering, or through which is
23 administered, the temporalities of any recognized church,
24 religious society, association or denomination.

25 (O) "Municipal cemetery" means a cemetery owned, operated,
26 controlled or managed by any city, village, incorporated town,

1 township, county or other municipal corporation, political
2 subdivision, or instrumentality thereof authorized by law to
3 own, operate or manage a cemetery. "Municipal cemetery" also
4 includes a cemetery placed in receivership pursuant to this Act
5 while such cemetery is in receivership.

6 (O-1) "Outer burial container" means a container made of
7 concrete, steel, wood, fiberglass, or similar material, used
8 solely at the interment site, and designed and used exclusively
9 to surround or enclose a separate casket and to support the
10 earth above such casket, commonly known as a burial vault,
11 grave box, or grave liner, but not including a lawn crypt.

12 (P) "Sales price" means the gross amount paid by a
13 purchaser on a pre-need sales contract for cemetery
14 merchandise, cemetery services or undeveloped interment,
15 entombment or inurnment spaces, excluding sales taxes, credit
16 life insurance premiums, finance charges and Cemetery Care Act
17 contributions.

18 (Q) (Blank).

19 (R) "Provider" means a person who is responsible for
20 performing cemetery services or furnishing cemetery
21 merchandise, interment spaces, entombment spaces, or inurnment
22 spaces under a pre-need sales contract.

23 (S) "Purchaser" or "buyer" means the person who originally
24 paid the money under or in connection with a pre-need sales
25 contract.

26 (T) "Parent company" means a corporation owning more than

1 12 cemeteries or funeral homes in more than one state.

2 (U) "Foreign warehouse facility" means a warehouse
3 facility now or hereafter located in any state or territory of
4 the United States, including the District of Columbia, other
5 than the State of Illinois.

6 A foreign warehouse facility shall be deemed to have
7 appointed the Comptroller to be its true and lawful attorney
8 upon whom may be served all legal process in any action or
9 proceeding against it relating to or growing out of this Act,
10 and the acceptance of the delivery of stored merchandise under
11 this Act shall be signification of its agreement that any such
12 process against it which is so served, shall be of the same
13 legal force and validity as though served upon it personally.

14 Service of such process shall be made by delivering to and
15 leaving with the Comptroller, or any agent having charge of the
16 Comptroller's Department of Cemetery and Burial Trusts, a copy
17 of such process and such service shall be sufficient service
18 upon such foreign warehouse facility if notice of such service
19 and a copy of the process are, within 10 days thereafter, sent
20 by registered mail by the plaintiff to the foreign warehouse
21 facility at its principal office and the plaintiff's affidavit
22 of compliance herewith is appended to the summons. The
23 Comptroller shall keep a record of all process served upon him
24 under this Section and shall record therein the time of such
25 service.

26 (Source: P.A. 91-7, eff. 1-1-00; 91-357, eff. 7-29-99; 92-16,

1 eff. 6-28-01; 92-419, eff. 1-1-02.)

2 (815 ILCS 390/14) (from Ch. 21, par. 214)

3 Sec. 14. Contract required.

4 (a) It is unlawful for any person doing business within
5 this State to accept sales proceeds, either directly or
6 indirectly, by any means unless the seller enters into a
7 pre-need sales contract with the purchaser which meets the
8 following requirements:

9 (1) A written sales contract shall be executed in at
10 least 11 point type in duplicate for each pre-need sale
11 made by a licensee, and a signed copy given to the
12 purchaser. Each completed contract shall be numbered and
13 shall contain: (i) the name and address of the purchaser,
14 the principal office of the licensee, and the parent
15 company of the licensee; (ii) the name of the person, if
16 known, who is to receive the cemetery merchandise, cemetery
17 services or the completed interment, entombment or
18 inurnment spaces under the contract; and (iii) specific
19 identification of such merchandise, services or spaces to
20 be provided, if a specific space or spaces are contracted
21 for, and the price of the merchandise, services, or space
22 or spaces.

23 (2) In addition, such contracts must contain a
24 provision in distinguishing typeface as follows:

25 "Notwithstanding anything in this contract to the

1 contrary, you are afforded certain specific rights of
2 cancellation and refund under the Illinois Pre-Need
3 Cemetery Sales Act, enacted by the 84th General Assembly of
4 the State of Illinois".

5 (3) All pre-need sales contracts shall be sold on a
6 guaranteed price basis. At the time of performance of the
7 service or delivery of the merchandise, the seller shall be
8 prohibited from assessing the purchaser or his heirs or
9 assigns or duly authorized representative any additional
10 charges for the specific merchandise and services listed on
11 the pre-need sales contract.

12 (4) Each contract shall clearly disclose that the price
13 of the merchandise or services is guaranteed and shall
14 contain the following statement in 12 point bold type:

15 "THIS CONTRACT GUARANTEES THE BENEFICIARY THE SPECIFIC
16 GOODS, SERVICES, INTERMENT SPACES, ENTOMBMENT SPACES, AND
17 INURNMENT SPACES CONTRACTED FOR. NO ADDITIONAL CHARGES MAY
18 BE REQUIRED FOR DESIGNATED GOODS, SERVICES, AND SPACES.
19 ADDITIONAL CHARGES MAY BE INCURRED FOR UNEXPECTED
20 EXPENSES."

21 (5) The pre-need sales contract shall provide that if
22 the particular cemetery services, cemetery merchandise, or
23 spaces specified in the pre-need contract are unavailable
24 at the time of delivery, the seller shall be required to
25 furnish services, merchandise, and spaces similar in style
26 and at least equal in quality of material and workmanship.

1 (6) The pre-need contract shall also disclose any
2 specific penalties to be incurred by the purchaser as a
3 result of failure to make payments; and penalties to be
4 incurred or moneys or refunds to be received as a result of
5 cancellation of the contract.

6 (7) The pre-need contract shall disclose the nature of
7 the relationship between the provider and the seller.

8 (8) Each pre-need contract that authorizes the
9 delivery of cemetery merchandise to a licensed and bonded
10 warehouse shall provide that prior to or upon delivery of
11 the merchandise to the warehouse the title to the
12 merchandise and a warehouse receipt shall be delivered to
13 the purchaser or beneficiary. The pre-need contract shall
14 contain the following statement in 12 point bold type:

15 "THIS CONTRACT AUTHORIZES THE DELIVERY OF MERCHANDISE TO A
16 LICENSED AND BONDED WAREHOUSE FOR STORAGE OF THE
17 MERCHANDISE UNTIL THE MERCHANDISE IS NEEDED BY THE
18 BENEFICIARY. DELIVERY OF THE MERCHANDISE IN THIS MANNER MAY
19 PRECLUDE REFUND OF SALE PROCEEDS THAT ARE ATTRIBUTABLE TO
20 THE DELIVERED MERCHANDISE."

21 The purchaser shall initial the statement at the time
22 of entry into the pre-need contract.

23 (9) Each pre-need contract that authorizes the
24 placement of cemetery merchandise at the site of its
25 ultimate use prior to the time that the merchandise is
26 needed by the beneficiary shall contain the following

1 statement in 12 point bold type:

2 "THIS CONTRACT AUTHORIZES THE PLACEMENT OF MERCHANDISE AT
3 THE SITE OF ITS ULTIMATE USE PRIOR TO THE TIME THAT THE
4 MERCHANDISE IS NEEDED BY THE BENEFICIARY. DELIVERY OF THE
5 MERCHANDISE IN THIS MANNER MAY PRECLUDE REFUND OF SALE
6 PROCEEDS THAT ARE ATTRIBUTABLE TO THE DELIVERED
7 MERCHANDISE."

8 The purchaser shall initial the statement at the time
9 of entry into the pre-need contract.

10 (10) Each pre-need contract that is funded by a trust
11 shall clearly identify the trustee's name and address and
12 the primary state or federal regulator of the trustee as a
13 corporate fiduciary.

14 (b) Every pre-need sales contract must be in writing. The
15 Comptroller may by rule develop a model pre-need sales contract
16 form that meets the requirements of this Act.

17 (c) To the extent the Rule is applicable, every pre-need
18 sales contract is subject to the Federal Trade Commission Rule
19 concerning the Cooling-Off Period for Door-to-Door Sales (16
20 CFR Part 429).

21 (d) No pre-need sales contract may be entered into in this
22 State unless there is a provider for the cemetery merchandise,
23 cemetery services, and undeveloped interment, inurnment, and
24 entombment spaces being sold. If the seller is not the
25 provider, then the seller must have a binding agreement with a
26 provider, and the identity of the provider and the nature of

1 the agreement between the seller and the provider must be
2 disclosed in the pre-need sales contract at the time of sale
3 and before the receipt of any sale proceeds. The failure to
4 disclose the identity of the provider, the nature of the
5 agreement between the seller and the provider, or any changes
6 thereto to the purchaser and beneficiary, or the failure to
7 make the disclosures required by this Section constitutes an
8 intentional violation of this Act.

9 (e) No pre-need contract may be entered into in this State
10 unless it is accompanied by a funding mechanism permitted under
11 this Act and unless the seller is licensed by the Comptroller
12 as provided in this Act. Nothing in this Act is intended to
13 relieve providers or sellers of pre-need contracts from being
14 licensed under any other Act required for their profession or
15 business or from being subject to the rules promulgated to
16 regulate their profession or business, including rules on
17 solicitation and advertisement.

18 (f) No pre-need contract may be entered into in this State
19 unless the seller explains to the purchaser the terms of the
20 pre-need contract prior to the purchaser signing and the
21 purchaser initials a statement in the contract confirming that
22 the seller has explained the terms of the contract prior to the
23 purchaser signing.

24 (g) The State Comptroller shall develop a booklet for
25 consumers in plain English describing the scope, application,
26 and consumer protections of this Act. After the booklet is

1 developed, no pre-need contract may be sold in this State
2 unless the seller distributes to the purchaser prior to the
3 sale a booklet developed or approved for use by the State
4 Comptroller.

5 (Source: P.A. 91-7, eff. 1-1-00; 92-419, eff. 1-1-02.)

6 (815 ILCS 390/15) (from Ch. 21, par. 215)

7 Sec. 15. (a) Whenever a seller receives anything of value
8 under a pre-need sales contract, the person receiving such
9 value shall deposit 50% of all proceeds received into one or
10 more trust funds maintained pursuant to this Section, except
11 that, in the case of proceeds received for the purchase of
12 outer burial containers, 85% of the proceeds shall be deposited
13 into one or more trust funds. Such deposits shall be made until
14 the amount deposited in trust equals 50% of the sales price of
15 the cemetery merchandise, cemetery services and undeveloped
16 spaces included in such contract, except that, in the case of
17 deposits for outer burial containers, deposits shall be made
18 until the amount deposited in trust equals 85% of the sales
19 price. In the event an installment contract is factored,
20 discounted or sold to a third party, the seller shall deposit
21 an amount equal to 50% of the sales price of the installment
22 contract, except that, for the portion of the contract
23 attributable to the sale of outer burial containers, the seller
24 shall deposit an amount equal to 85% of the sales price.
25 Proceeds required to be deposited in trust which are

1 attributable to cemetery merchandise and cemetery services
2 shall be held in a "Cemetery Merchandise Trust Fund". Proceeds
3 required to be deposited in trust which are attributable to the
4 sale of undeveloped interment, entombment or inurnment spaces
5 shall be held in a "Pre-construction Trust Fund". If
6 merchandise is delivered for storage in a bonded warehouse, as
7 authorized herein, and payment of transportation or other
8 charges totaling more than \$20 will be required in order to
9 secure delivery to the site of ultimate use, upon such delivery
10 to the warehouse the seller shall deposit to the trust fund the
11 full amount of the actual or estimated transportation charge.
12 Transportation charges which have been prepaid by the seller
13 shall not be deposited to trust funds maintained pursuant to
14 this Section. As used in this Section, "all proceeds" means the
15 entire amount paid by a purchaser in connection with a pre-need
16 sales contract, including finance charges and Cemetery Care Act
17 contributions, but excluding sales taxes and credit life
18 insurance premiums.

19 (b) The seller shall act as trustee of all amounts received
20 for cemetery merchandise, services, or undeveloped spaces
21 until those amounts have been deposited into the trust fund.
22 All trust deposits required by this Act shall be made within 30
23 days following the end of the month of receipt. The seller must
24 retain a corporate fiduciary as an independent trustee for any
25 amount of trust funds. Upon 30 days prior written notice from
26 the seller to the Comptroller, the seller may change the

1 trustee of the trust fund. Failure to provide the Comptroller
2 with timely prior notice is an intentional violation of this
3 Act.

4 (c) A trust established under this Act must be maintained
5 with a corporate fiduciary as defined in Section 1-5.05 of the
6 Corporate Fiduciary Act.†

7 ~~(1) in a trust account established in a bank, savings~~
8 ~~and loan association or credit union authorized to do~~
9 ~~business in Illinois where such accounts are insured by an~~
10 ~~agency of the federal government;~~

11 ~~(2) in a trust company authorized to do business in~~
12 ~~Illinois; or~~

13 ~~(3) in an investment company authorized to do business~~
14 ~~in Illinois insured by the Securities Brokers Insurance~~
15 ~~Corporation.~~

16 (d) Funds deposited in the trust account shall be
17 identified in the records of the seller by the name of the
18 purchaser. Nothing shall prevent the trustee from commingling
19 the deposits in any such trust fund for purposes of the
20 management thereof and the investment of funds therein as
21 provided in the "Common Trust Fund Act", approved June 24,
22 1949, as amended. In addition, multiple trust funds maintained
23 pursuant to this Act may be commingled or commingled with other
24 funeral or burial related trust funds, provided that all record
25 keeping requirements imposed by or pursuant to law are met.

26 (e) In lieu of a pre-construction trust fund, a seller of

1 undeveloped interment, entombment or inurnment spaces may
2 obtain and file with the Comptroller a performance bond in an
3 amount at least equal to 50% of the sales price of the
4 undeveloped spaces or the estimated cost of completing
5 construction, whichever is greater. The bond shall be
6 conditioned on the satisfactory construction and completion of
7 the undeveloped spaces as required in Section 19 of this Act.

8 Each bond obtained under this Section shall have as surety
9 thereon a corporate surety company incorporated under the laws
10 of the United States, or a State, the District of Columbia or a
11 territory or possession of the United States. Each such
12 corporate surety company must be authorized to provide
13 performance bonds as required by this Section, have paid-up
14 capital of at least \$250,000 in cash or its equivalent and be
15 able to carry out its contracts. Each pre-need seller must
16 provide to the Comptroller, for each corporate surety company
17 such seller utilizes, a statement of assets and liabilities of
18 the corporate surety company sworn to by the president and
19 secretary of the corporation by January 1 of each year.

20 The Comptroller shall prohibit pre-need sellers from doing
21 new business with a corporate surety company if the company is
22 insolvent or is in violation of this Section. In addition the
23 Comptroller may direct a pre-need seller to reinstate a
24 pre-construction trust fund upon the Comptroller's
25 determination that the corporate surety company no longer is
26 sufficient security.

1 All performance bonds issued pursuant to this Section must
2 be irrevocable during the statutory term for completing
3 construction specified in Section 19 of this Act, unless
4 terminated sooner by the completion of construction.

5 (f) Whenever any pre-need contract shall be entered into
6 and include 1) items of cemetery merchandise and cemetery
7 services, and 2) rights to interment, inurnment or entombment
8 in completed spaces without allocation of the gross sale price
9 among the items sold, the application of payments received
10 under the contract shall be allocated, first to the right to
11 interment, inurnment or entombment, second to items of cemetery
12 merchandise and cemetery services, unless some other
13 allocation is clearly provided in the contract.

14 (g) Any person engaging in pre-need sales who enters into a
15 combination sale which involves the sale of items covered by a
16 trust or performance bond requirement and any item not covered
17 by any entrustment or bond requirement, shall be prohibited
18 from increasing the gross sales price of those items not
19 requiring entrustment with the purpose of allocating a lesser
20 gross sales price to items which require a trust deposit or a
21 performance bond.

22 (Source: P.A. 91-7; eff. 1-1-2000.)

23 (815 ILCS 390/16) (from Ch. 21, par. 216)

24 Sec. 16. Trust funds; disbursements.

25 (a) A trustee shall make no disbursements from the trust

1 fund except as provided in this Act.

2 (b) A trustee has a duty to invest and manage the trust
3 assets pursuant to the Prudent Investor Rule under the Trusts
4 and Trustees Act. Whenever the seller changes trustees pursuant
5 to this Act, the trustee must provide written notice of the
6 change in trustees to the Comptroller no less than 28 days
7 prior to the effective date of such a change in trustee. The
8 trustee has an ongoing duty to provide the Comptroller with a
9 current and true copy of the trust agreement under which the
10 trust funds are held pursuant to this Act. ~~shall, with respect~~
11 ~~to the investment of such trust funds, exercise the judgment~~
12 ~~and care under the circumstances then prevailing which persons~~
13 ~~of prudence, discretion and intelligence exercise in the~~
14 ~~management of their own affairs, not in regard to speculation,~~
15 ~~but in regard to the permanent disposition of their funds,~~
16 ~~considering the probable income as well as the probable safety~~
17 ~~of their capital.~~

18 ~~The seller shall act as trustee of all amounts received for~~
19 ~~cemetery merchandise, services, or undeveloped spaces until~~
20 ~~those amounts have been deposited into the trust fund. The~~
21 ~~seller may continue to be the trustee of up to \$500,000 that~~
22 ~~has been deposited into the trust fund, but the seller must~~
23 ~~retain an independent trustee for any amount of trust funds in~~
24 ~~excess of \$500,000. A seller holding trust funds in excess of~~
25 ~~\$500,000 must retain an independent trustee for its trust funds~~
26 ~~in excess of \$500,000 as soon as may be practical. The~~

1 ~~Comptroller shall have the right to disqualify the trustee upon~~
2 ~~the same grounds as for refusing to grant or revoking a license~~
3 ~~hereunder. Upon notice to the Comptroller, the seller may~~
4 ~~change the trustee of the trust fund.~~

5 (c) The trustee may rely upon certifications and affidavits
6 made to it under the provisions of this Act, and shall not be
7 liable to any person for such reliance.

8 (d) A trustee shall be allowed to withdraw from the trust
9 funds maintained pursuant to this Act, ~~payable solely from the~~
10 ~~income earned on such trust funds,~~ a reasonable fee pursuant to
11 the Trusts and Trustees Act ~~for all usual and customary~~
12 ~~services for the operation of the trust fund, including, but~~
13 ~~not limited to trustee fees, investment advisor fees,~~
14 ~~allocation fees, annual audit fees and other similar fees. The~~
15 ~~maximum amount allowed to be withdrawn for these fees each year~~
16 ~~shall be the lesser of 3% of the balance of the trust~~
17 ~~calculated on an annual basis or the amount of annual income~~
18 ~~generated therefrom.~~

19 (e) The trust shall be a single-purpose trust fund. In the
20 event of the seller's bankruptcy, insolvency or assignment for
21 the benefit of creditors, or an adverse judgment, the trust
22 funds shall not be available to any creditor as assets of the
23 seller or to pay any expenses of any bankruptcy or similar
24 proceeding, but shall be distributed to the purchasers or
25 managed for their benefit by the trustee holding the funds.
26 Except in an action by the Comptroller to revoke a license

1 issued pursuant to this Act and for creation of a receivership
2 as provided in this Act, the trust shall not be subject to
3 judgment, execution, garnishment, attachment, or other seizure
4 by process in bankruptcy or otherwise, nor to sale, pledge,
5 mortgage, or other alienation, and shall not be assignable
6 except as approved by the Comptroller. The changes made by this
7 amendatory Act of the 91st General Assembly are intended to
8 clarify existing law regarding the inability of licensees to
9 pledge the trust.

10 (f) Because it is not known at the time of deposit or at
11 the time that income is earned on the trust account to whom the
12 principal and the accumulated earnings will be distributed, for
13 purposes of determining the Illinois Income Tax due on these
14 trust funds, the principal and any accrued earnings or losses
15 relating to each individual account shall be held in suspense
16 until the final determination is made as to whom the account
17 shall be paid.

18 (g) A trustee shall at least annually furnish to each
19 purchaser a statement identifying: (1) the receipts,
20 disbursements, and inventory of the trust, including an
21 explanation of any fees or expenses charged by the trustee
22 under paragraph (d) of this Section or otherwise, (2) an
23 explanation of the purchaser's right to a refund, if any, under
24 this Act, and (3) the primary regulator of the trust as a
25 corporate fiduciary under state or federal law.

26 (Source: P.A. 91-7, eff. 6-1-99; 92-419, eff. 1-1-02.)

1 Section 90. The State Finance Act is amended by adding
2 Section 5.719 as follows:

3 (30 ILCS 105/5.719 new)

4 Sec. 5.719. The Pre-need Funeral Consumer Protection
5 Fund.".